IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 888 of 2006()

ST.329/2005 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER:

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1. SHAMEER KURIKKAL, AGED 25 YEARS,
   S/O.MOOSA KURIKKAL, MANHAPPATTA, ELANKUR P.O.,
   MALAPPURAM DISTRICT.

2. CHENGARAYI SUBAIDA, AGED 43 YEARS,
   D/O.MUHAMMED, CHANGARAYI, MANHAPPATA,
   ELANKUR P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.K.SHIBILI NAHA

RESPONDENTS:

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1. NEDUMKUNDAN JASEENA, AGED 20,
   D/O.SULAIMAN, NEDUMKUNDAN HOUSE,
   AMAYUR P.O.KARAKKUNNU, MALAPPURAM DISTRICT.

2. STATE REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.M.SATHYANATHA MENON
PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. OF 888 2006

Dated this the 31st day of January, 2007

ORDER

Before signing the order which was dictated on 25/1/2007, the learned counsel for the petitioners requested that he may be heard. Accordingly, he has been heard again and I am proceeding to pass the order.

2. This Crl.M.C. is filed by the petitioners who are the husband and mother-in-law of the respondent/complainant. The learned Magistrate has taken cognizance of the offence punishable under Sec.500 of the IPC against the petitioners and another. The short prayer is that the powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings initiated by the 1st respondent against the petitioners.

3. Arguments have been heard. I have been taken through the averments in the complaint – Annexure-I.

4. The crux of the allegations against the petitioners who are accused 1 and 2 is that they, with the deliberate

intention of defaming the respondent/complaint spread canards against the respondent by castigating her as a person of unsound mind. This, in short, is the allegation.

5. I have gone through the petition and the Annexures. There can possibly be no contention that if the allegations raised are true, no offence under Sec.499 punishable under Sec.500 of the IPC has been committed by the petitioners. The allegations show that such imputations have been made which would bring down the complainant in the assessment of right thinking members of the polity. At any rate, I am not persuaded to agree that there is any justification in the prayer for invoking the powers under Sec.482 of the Cr.P.C.

6. The very specific allegation is that the petitioners made an imputation that the complainant is unsound mind. This imputation, it is evident notwithstanding the alleged inadequacy of pleadings, amounts to defamation. This, in short, is the main contention raised. The fact that in a complaint filed to initiate prosecution under Sec.498A of the IPC against the petitioners and in a petition filed under Sec.125 of the Cr.P.C. against the 1st petitioner/husband, identical averments have been made is not, at any rate, sufficient to come to a conclusion that this prosecution under Sec.500 of the IPC is not legally

sustainable.

7. My attention has been drawn to Annexures-V and VI – complaint/petition filed by the 1st respondent before the learned Magistrate. In such complaint under Sec.498A of the IPC and the petition under Sec.125 of the Cr.P.C. are produced as Annexures-V and VI. The fact that the allegations overlap in Annexures-I, V and VI is not, at any rate, a sufficient reason to justify the invocation of the powers under Sec.482 of the Cr.P.C. to quash the proceedings when the allegations in Annexure-I, if accepted, do reveal the offence punishable under Sec.500 of the IPC.

8. I am not, in these circumstances, persuaded to invoke the powers under Sec.482 of the Cr.P.C.

9. This Crl.M.C. is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioners to raise all necessary and appropriate contentions before the learned Magistrate in the course of the trial.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge